

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ALYSSA ROSE CARNES,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,  
  
Petitioner-Appellee,

v

WOODROW SCOTT CARNES,  
  
Respondent-Appellant,

and

SARAH RENEE BRUGLIO and JOHN  
FREDRICK ANDERSON,  
  
Respondents.

UNPUBLISHED  
August 27, 2009

No. 290047  
Macomb Circuit Court  
Family Division  
LC No. 2008-000154-NA

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In the Matter of ALYSSA ROSE CARNES,  
TYLER JOHN ANDERSON, and BRITTANEY  
FAITH BRUGLIO, Minors.

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DEPARTMENT OF HUMAN SERVICES,  
  
Petitioner-Appellee,

v

SARAH RENEE BRUGLIO,  
  
Respondent-Appellant,

and

JOHN FREDRICK ANDERSON and

No. 290137  
Macomb Circuit Court  
Family Division  
LC Nos. 2008-000154-NA;  
2008-000155-NA;  
2008-000156-NA

WOODROW SCOTT CARNES,

Respondents.

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Before: Cavanagh, P.J., and Markey and Davis, JJ.

PER CURIUM.

In these consolidated appeals, respondent Sarah Bruglio (hereinafter “respondent-mother”) and respondent Woodrow Carnes (hereinafter “respondent-father”) each appeal as of right from the trial court’s order terminating their parental rights to respondent-mother’s three children and respondent-father’s daughter Alyssa, pursuant to MCL 712A.19b(c)(i), (g), and (j). We affirm.

Petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the trial court’s findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* Deference is accorded to the trial court’s assessment of the credibility of the witnesses. *Id.*; MCR 2.613(C). Once a statutory ground for termination is established by clear and convincing evidence, the trial court shall order termination of parental rights if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). The court’s best interests decision is also reviewed for clear error. *In re Trejo*, *supra* at 356-357.

#### I. Respondent-Father’s Appeal in Docket No. 290047

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to respondent-father. The evidence showed that respondent-father failed to substantially comply with the terms of his parent-agency agreement, which was evidence of his inability to provide proper care and custody of the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

Respondent-father was never able to obtain stable employment and never established housing outside his mother’s home. Although respondent-father complains that the caseworker never investigated his mother’s home to determine if it would be appropriate for his child, the caseworker testified that respondent-father advised her that he did not intend to reside there permanently. Furthermore, respondent-father failed to comply with more critical elements of his treatment plan. He failed to either submit regular drug screens, or provide documentation of attendance at AA meetings, complete outpatient substance abuse treatment, parenting classes or individual counseling. He also failed to regularly visit his child.

We reject respondent-father’s argument that termination was premature. Considering how little respondent-father had completed of his treatment plan, there was no reasonable expectation that he would be able to rectify the conditions that led to the adjudication, or be in a

position to provide proper care and custody, within a reasonable time. Therefore, termination was not premature under §§ 19b(3)(c)(i) and (g). Contrary to what respondent-father argues, the trial court was not required to provide him with an opportunity to work on his treatment plan for at least one year before proceeding to termination. Indeed, § 19b(3)(c)(i) expressly authorizes termination of parental rights if 182 days have elapsed since issuance of the initial dispositional order, and there is no reasonable likelihood that the conditions that led to the adjudication will be rectified within a reasonable time.

We also reject respondent-father's argument that the trial court should have continued the child's temporary placement with his mother or established a guardianship arrangement with his mother, in lieu of terminating his parental rights. A court may place a child with a relative in lieu of terminating a respondent's parental rights if it is in the child's best interests, but the court is not required to do so. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Here, a placement arrangement with respondent-father's mother was never proposed below, nor did she express an interest in caring for the child. Accordingly, the trial court did not err by failing to consider such an arrangement.

Respondent-father lastly argues that termination of his parental rights was not in the child's best interests. We disagree. Respondent-father's argument is based on his contention that he made substantial progress in addressing the problems that led to the court's jurisdiction over the child. As previously indicated, however, the record does not support respondent-father's claim. Although respondent-father maintains that he loves his child and wants to provide for her, it is clear from the evidence that he would not be in a position to provide for her care or needs anytime soon. Moreover, respondent-father failed to regularly visit his child while she was in care despite the opportunity to do so. Considering the child's need for permanency and respondent-father's failure to demonstrate that he would be able to properly parent his child in the foreseeable future, the trial court did not clearly err in finding that termination of his parental rights was in the child's best interests.

## II. Respondent-Mother's Appeal in Docket No. 290137

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to respondent-mother. Although respondent-mother initially made some progress with her treatment plan, she failed to resolve her substance abuse problem, stopped complying with services in November 2008, and resumed using marijuana and alcohol. Further, respondent-mother failed to address her outstanding criminal warrants and, as a result, was likely to be incarcerated for another year, thereby further delaying her ability to comply with services and address the various issues that led to the court's jurisdiction over her children. Considering respondent-mother's lack of progress with her treatment plan and her impending incarceration, there was no reasonable expectation that she would be able to rectify the conditions that led to the adjudication, or be in a position to provide proper care and custody, within a reasonable time. Thus, termination was appropriate under §§ 19b(3)(c)(i) and (g). Respondent-mother asserts that her parental rights should not have been terminated under § 19b(3)(j) because there was no evidence that she physically abused the children. Although § 19b(3)(j) is applicable where there is a risk of future harm to a child, it is not limited to physical abuse. A child may be at risk of harm due to a parent's drug abuse, criminal conduct, or unsafe living conditions. In this case, given respondent-mother's failure to

resolve her problems with substance abuse, depression, and housing, there was a reasonable likelihood that the children would be harmed if returned to her home. Thus, termination was appropriate under § 19b(3)(j).

The record does not support respondent-mother's argument that the caseworker discouraged her from working on her treatment plan and encouraged her to release her parental rights. Rather, the record indicates that the caseworker was merely discussing respondent-mother's options if she were not willing to work toward reunification. Respondent-mother admitted that her own attorney gave her similar advice. Ultimately, it was up to respondent-mother to make the commitment to work toward reunification.

Next, considering respondent-mother's lack of progress in addressing the issues that led to the adjudication, her impending future incarceration, and the children's need for stability and permanence, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

We also disagree with respondent-mother's argument that her due process rights were violated because the trial court persuaded her to testify when she was physically and emotionally fragile and because she was denied sufficient time to complete her parent-agency agreement.

"Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, *supra* at 210. Due process is a flexible concept, the essence of which is to ensure fundamental fairness. *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825 (2005). A fundamental element of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009).

The record does not support respondent-mother's claim that she was unable to testify. She admitted that she was physically able to testify, but was reluctant to do so because it was emotionally difficult. The trial court did not compel or coerce respondent-mother to testify. The court merely explained the potential consequences of not testifying, after which respondent-mother agreed to testify. Afterwards the court allowed respondent-mother to confer with her attorney, but respondent-mother stated that she was ready to testify. The court advised respondent-mother to take her time testifying and explained that if she needed additional time, the court would give it to her.

In sum, the trial court questioned respondent-mother to ascertain whether she were physically capable of testifying, which she acknowledged she was. Although she indicated that testifying would be emotionally difficult, respondent-mother's reticence is not unusual. A parental rights termination hearing is an emotional experience, but that is not a reason to adjourn the hearing. The trial court gave respondent-mother an opportunity to confer with counsel and expressed its willingness to accommodate her during her testimony. Respondent-mother was given "a fair opportunity to participate" and be heard, and her due process rights were not violated. *In re Rood*, *supra* at 76.

Further, the trial court did not violate respondent-mother's right to due process by failing to afford her additional time to work on her treatment plan. The court's decision to proceed

toward termination was justified because of respondent-mother's lack of progress with her treatment plan. In addition, because there was no reasonable expectation that she would be able to rectify the conditions that led to the adjudication, or be in a position to provide proper care and custody, within a reasonable time, termination was not premature. Respondent-mother's right to due process was not violated.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Alton T. Davis